



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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| 2001 Assembly Bill 439 | Assembly Amendment 1 |
| Memo published: October 16, 2001 Contact: William Ford, Senior Staff Attorney (266-0680) | |

Assembly Bill 439 contains nine unrelated revisions to state tax laws administered by the Department of Revenue (DOR).

One provision of Assembly Bill 439 authorizes DOR to compromise or reduce a taxpayer's liability for unpaid taxes, even if the taxes are not delinquent. Under current law, the DOR may compromise or reduce a taxpayer's liability for unpaid taxes only if the taxes have become delinquent. The circumstances giving rise to an unpaid but not yet delinquent tax liability is where a person's liability is determined by the DOR on audit or during a taxpayer's appeal of a determination of tax liability.

Assembly Amendment 1 provides that a compromise between a taxpayer and the DOR with respect to unpaid taxes is valid if the taxpayer pays the taxes according to a payment schedule agreed to as a part of the compromise. In addition, the amendment authorizes the DOR to order a taxpayer whose taxes have been compromised to pay the full amount of the taxes if, within three years of the final payment under the payment schedule, the DOR determines that the taxpayer has the financial means to make a full payment. These provisions of the amendment are identical to provisions enacted in 1999 Wisconsin Act 189 with respect to compromise concerning taxes that have become delinquent.

A second provision of Assembly Bill 439 requires a seller who mistakenly collects sales taxes from a buyer to return the mistakenly collected taxes to the buyer. This is required if either the seller determines that the sale was not taxable and so does not send the money to the DOR or if the taxes are paid to DOR but it is determined, by audit, that the sale was not taxable. If the seller cannot return the tax to the buyer, generally because the seller cannot locate the buyer, the seller is required under the bill to return the tax to the DOR. These requirements exist under current law, but apply only to situations where a seller makes a claim for a refund from DOR.

Assembly Amendment 1 provides that a seller who collects taxes erroneously from a buyer for a real property construction activity or a nontaxable service may reduce the taxes and interest that he or

she is required to submit to the buyer or to the DOR for that activity or service by the amount of tax and interest subsequently due and paid on the purchase of tangible personal property used by the person in providing the real property construction activity or nontaxable service.

Assembly Amendment 1 was adopted by the Assembly Committee on Ways and Means by a vote of Ayes, 12, Noes, 0, and Assembly Bill 439 was recommended for passage, as amended, by a vote of Ayes, 12, Noes, 0, on September 5, 2001.

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